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DEPARTMENT OF DEFENSE

General Services Administration

National Aeronautics and Space Administration

[Docket 2012-0076; Sequence 35]

[OMB Control No. 9000-0095]

**Federal Acquisition Regulation; Submission for OMB Review;
Commerce Patent Regulations**

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding the extension of a previously existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning Department of Commerce patent regulations. A notice was published in Federal Register at 77 FR 43082, on July 23, 2012. One respondent submitted comments.

DATES: Submit comments on or before **[Enter date 30 days after date of publication in the Federal Register.]**

ADDRESSES: Submit comments identified by **Information Collection 9000-0095, Commerce Patent Regulations**, by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>.

Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link

"Submit a Comment" that corresponds with "Information Collection 9000-0095, Commerce Patent Regulations". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 9000-0095, Commerce Patent Regulations" on your attached document.

- Fax: 202-501-4067.
- Mail: General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street, NE, Washington, DC 20417. ATTN: Hada Flowers/IC 9000-0095, Commerce Patent Regulations.

Instructions: Please submit comments only and cite Information Collection 9000-0095, Commerce Patent Regulations, in all correspondence related to this collection. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb, Procurement Analyst, Office of Governmentwide Acquisition Policy, GSA, (202) 501-0650 or email Edward.loeb@gsa.gov.

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR Subpart 27.3, Patents Rights under Government Contracts, implements the Department of Commerce regulation (37 CFR 401) based on chapter 18 of title 35 U.S.C.,

Presidential Memorandum on Government Patent Policy to the Heads of Executive Departments and Agencies, dated February 18, 1983, and Executive Order 12591, Facilitating Access to Science and Technology, dated April 10, 1987. Under the subpart, a contracting officer may insert clauses 52.227-11, Patent Rights-Ownership by the Contractor, or 52.227-13, Patent Rights-Ownership by the Government, in solicitations and contracts pertaining to inventions made in the performance of experimental, developmental, or research work.

In accordance with the clauses, a Government contractor must report all subject inventions to the contracting officer, submit a disclosure of the invention, and identify any publication, or sale, or public use of the invention (52.227-11(c), 52.227-13(e)(1)). The contracting officer may modify 52.227-11(e) or otherwise supplement the clause to require contractors to submit periodic or interim and final reports listing subject inventions (27.303(b)(2)(i) and (ii)). In order to ensure that subject inventions are reported, the contractor is required to establish and maintain effective procedures for identifying and disclosing subject inventions (52.227-11, Alternate IV; 52.227-13(e)(1)). In addition, the contractor must require his employees, by written agreements, to disclose subject inventions (52.227-11(e)(2); 52.227-13(e)(4)). The contractor also has an obligation to utilize the subject

invention, and agree to report, upon request, the utilization or efforts to utilize the subject invention (27.302(e); 52.227-11(f)).

B. Discussion and Analysis

One respondent submitted public comments on the extension of the previously approved information collection. The analysis of public comments is summarized as follows:

Comment: The respondent commented that the extension of the information collection would violate the fundamental purposes of the Paperwork Reduction Act because of the burden it puts on the entity submitting the information and the agency collecting the information.

Response: In accordance with the Paperwork Required Act (PRA), agencies can request an OMB approval of an existing information collection. The PRA requires that agencies use the Federal Register notice and comment process, to extend the OMB's approval, at least every three years. This extension, to a previously approved information collection, pertains to the requirements of FAR clauses 52.227-11, Patent Rights-Ownership by the Contractor, or 52.227-13, Patent Rights-Ownership by the Government. The information is used, among other things to: (1) Encourage maximum participation of industry in federally supported research and development efforts; (2) Ensure that these inventions are used in a manner to promote free competition

and enterprise without unduly encumbering future research and discovery; (3) Promote the commercialization and public availability of the inventions made in the United States by United States industry and labor; (4) Ensure that the Government obtains sufficient rights in federally supported inventions to meet the needs of the Government and protect the public against nonuse or unreasonable use of inventions; and (5) Minimize the costs of administering patent policies.

Comment: The respondent commented that the agency did not accurately estimate the public burden challenging that the agency's methodology for calculating it is insufficient and inadequate and does not reflect the total burden. For this reason, the respondent provided that the agency should reassess the total burden hours and revise the estimate upwards to be more accurate, as was done in FAR Case 2007-006. The same respondent also provided that the burden of compliance with the agency's information collection requirement greatly exceeds the agency's estimate and outweighs any potential utility of the extension.

The respondent indicated that the number of annual respondents is understated and that the number of respondents is likely at least ten to twenty higher than the Government's estimate of 1200 annual respondents. The commenter also indicated that the number of responses per year was significantly understated at 10 such responses per

year and that it would take more than four hours to comply with the requirements contained herein.

Response: Serious consideration is given, during the open comment period, to all comments received and adjustments are made to the paperwork burden estimate based on reasonable considerations provided by the public. This is evidenced, as the respondent notes, in FAR Case 2007-006 where an adjustment was made from the total preparation hours from three to 60. This change was made considering particularly the hours that would be required for review within the company, prior to release to the Government.

The burden is prepared taking into consideration the necessary criteria in OMB guidance for estimating the paperwork burden put on the entity submitting the information. For example, consideration is given to an entity reviewing instructions; using technology to collect, process, and disclose information; adjusting existing practices to comply with requirements; searching data sources; completing and reviewing the response; and transmitting or disclosing information. The estimated burden hours for a collection are based on an average between the hours that a simple disclosure by a very small business might require and the much higher numbers that might be required for a very complex disclosure by a major corporation. Also, the estimated burden hours should only

include projected hours for those actions which a company would not undertake in the normal course of business. Careful consideration went into assessing the estimated burden hours for this collection.

A comprehensive re-evaluation of the burden associated with this collection has resulted in an upward adjustment in the estimated total annual burden hours from 45,630 to 57,352. The review was conducted by the Government's experts in patent regulations and the Department of Commerce patent regulation processes. As a result of the review, the burden hours were increased by over 25%. The recommended increase by the respondent was not supported by the review. A more detailed breakdown of the review is included in the supporting statement for this collection.

At any point, members of the public may submit comments for further consideration, and are encouraged to provide data to support their request for an adjustment.

C. Annual Reporting Burden

Respondents: 3759.

Responses Per Respondent: 3.8143.

Total Responses: 14,338.

Hours Per Response: 4.0.

Total Burden Hours: 57,352.

OBTAINING COPIES OF PROPOSALS: Requesters may obtain a copy of the information collection documents from the General Services Administration (GSA), Regulatory Secretariat (MVCB), 1275 First Street, NE, Washington, DC 20417, telephone (202) 501-4755. Please cite OMB Control No. 9000-0095, Commerce Patent Regulations, in all correspondence.
Dated: May 17, 2013.

William Clark,
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Federal Acquisition Policy Division,
Office of Governmentwide Acquisition Policy,
Office of Acquisition Policy,
Office of Governmentwide Policy.

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